IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

INCOME TAX APPEAL NO. 832 OF 2000.

Shri Punit Gupta ..Appellant.
vs.
The Income-tax Officer,
Ward 17(6) Mumbai. ..Respondent.

WITH
INCOME TAX APPEAL NO. 833 OF 2000.

Shri Manish Gupta ..Appellant.
vs.
The Income-tax Officer,
Ward 17(6) Mumbai. ..Respondent.

WITH
INCOME TAX APPEAL NO. 868 OF 2000.

Smt.Shashi P. Gupta ..Appellant.
vs.
The Income-tax Officer,
Ward 17(6) Mumbai. ..Respondent.

Mr. V.H. Patil, Senior Counsel with Ms. Aasifa Khan for the appellant..

Mr. Ashok Kotangale with Mr. Prashant Uchil for the respondent.

(in all matters).

CORAM : V.C.DAGA & J.P.DEVADHAR,JJ.
DATED : 13.6 .2006.

P.C. :

. Heard rival parties.

Perused petition.

2. These appeals involving identical facts giving rise to the common substantial questions of law were admitted on 26.11.2001, so this common judgment shall dispose of all the three appeals.

FACTS:

3. The factual matrix reveals that the appellants in all these cases were the owners of 1/12th share in a premises No. 103 in a building known as "Kashiram Jamnadas" situated at 5, P.D'mello Road, Mumbai- 400 009. The said premises was given on tenancy basis to one company; namely; M/s Merzario Shipping Agencies Pvt.Ltd ('the company' for short) w.e.f. April 1987.

4. It seems that during the previous year relevant to A.Y. 1989-90 the said company appears to have written a letter dated 2.2.1993 to its Assessing Officer, the Deputy Commissioner of Income-tax, Special Range 32, Mumbai, alleging that Rs.12 lakhs had been paid in cash in respect of the said premises as "on money" to one Mr.K.J. Gupta for acquiring tenancy rights in the premises.

5. It seems that the aforesaid company in another letter dated 5.1.1993. written to its own assessing officer, appears to have claimed that this amount of Rs. 12 lakhs was shown by the said company in the books of accounts as deposit and the same appeared in its balance sheet under the Head "Current Assets, Loans and Advances". The

appellants were not given copy of this letter.

6. The appellants filed on 8.5.1990 return of income for A.Y. 1989-90 offering total income at Rs. 20,340/-. The said return was assessed u/s 143 of the Act.

7. It seems that aforesaid two letters written by the company were treated as an information received by the Assessing Officer of the appellants, viz. the respondents herein. The said Deputy Commissioner of Income-tax, Special Range 32, Mumbai, informed him that the appellants were owners of 1/12th share in the said premises and that the appellants had received "on money"; falling to their share amounting to Rs. 1 lakh; out of the aforesaid on money of Rs. 12 lakhs; alleged to have been paid by the said company. On the basis of these so-called letters, the Assessing Officer of the appellants i.e. the respondent issued notice for re-assessment under section 148 so as to re-open the assessment of the appellants for A.Y. 1989-90.

7. In response to this notice u/s 148, the appellants filed revised return of income on 4.4.1994 declaring the same income in the sum of Rs. 20,340/- as was declared in the original return.

8. The respondents passed assessment orders on 30.10.2005 and made additions of Rs. 1,00,000/- (1/12th share out of Rs. 12 lakhs) to the income of the appellants.

9. The appellants herein are the legal heirs of Late Shri K.J. Gupta, who, not being satisfied with the order of assessment preferred appeals before the C.I.T.(Appeals), who was pleased to confirm the order of the Assessing Officer vide its order dated 21.3.1979. The Tribunal in appeals preferred by the appellants was again pleased to affirm the order passed by the C.I.T. (Appeals) vide its order dated 25.1.2002.

10. Aggrieved by the aforesaid order, legal heirs of K.J. Gupta have invoked appellate jurisdiction of this Court under section 260A of the Income-tax Act. The appeals came to be admitted on the following substantial questions of law.

.(i) Whether, on the fact circumstances of the case, the Tribunal erred in holding that the appellant had received Rs.1,00,000/- by way of on money?

.(ii) Whether the order of the Tribunal is

bad and illegal as the same is also passed in breach of principles of natural justice?

Submissions:

11. Mr. Patil learned Counsel for the appellants submits that the appeal filed by Mr.Kamal Gupta, one of the co-owners of the property in question, who had 1/4th share in the property, was allowed by the Tribunal vide its order dated 31.8.2001, holding that Mr. K.J. Gupta did not receive any on money. That the aforesaid order of the Tribunal has not been challenged by the Revenue. It has become final and conclusive.

12. Mr. Patil submits that if order passed against one of the co-owners holding that he had not received on money; then one cannot hold that other co-owners have received. He, thus, submits that no adverse finding in respect of other co-owners can be recorded and allowed to be sustained, when it forms integral part of the same transaction.

13. Mr. Kotangale, learned Counsel appearing for the Revenue though tried to support the impugned order and found it difficult to take his submission to the logical end; on the face of two contradictory findings in two different orders of

the Tribunal; especially in absence of any challenge, at the instance of the Revenue, to that order which was against Revenue in case of Mr. K.J. Gupta.

Consideration:

14. Having heard rival parties, above submissions made by Mr. Patil need acceptance. The present appeals are liable to be allowed. There cannot be two contradictory and inconsistent findings in respect of the same transaction.

15. The case of the department is that all the co-owners received "on money". In case of one of co-owners finding is that he did not receive. Thus, the theory of receipt of on money has not been accepted by the Tribunal in case of one of the co-owners. If that be so, others cannot be allowed to suffer this adverse finding.

16. The impugned orders are, therefore, liable to be quashed and set aside.

17. In the result, all these appeals are allowed. The substantial questions of law framed are answered in favour of the assessee and against the revenue. The impugned orders are quashed and

set aside. No order as to costs.

(V.C.DAGA,J.)

(J.P.DEVADHAR,J.)